

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 220

**Introduced by Committee on Public Safety (Leno (Chair), Cohn,
Dymally, Goldberg, Ruskin, and Spitzer)**

February 3, 2005

An act to amend Sections 4801, 5075.5, and 13823.9 of the Penal Code, to amend Section 3030 of the Family Code, and to amend Section 340.3 of the Code of Civil Procedure, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 220, as amended, Committee on Public Safety. Domestic violence.

Existing law permits the Board of Prison Terms, at parole hearings, to consider evidence that a prisoner suffered from battered woman syndrome at the time the crime was committed.

This bill would change the reference from "battered woman syndrome" to "intimate partner battering."

Existing law provides that commissioners and deputy commissioners who conduct parole hearings must be trained in domestic violence and battered woman syndrome.

This bill would change the reference from "battered woman syndrome" to "intimate partner battering."

Existing law directs that health care providers be trained in the dynamics of victimization, including battered woman syndrome.

This bill would change the reference to intimate partner battering.

Existing law provides that a court may consider expert testimony about battered woman syndrome when considering whether or not to

grant custody to a parent who has been convicted of murdering the other parent of the child who is the subject of the order.

This bill would change the reference from “battered womans syndrome” to “intimate partner battering.”

Existing law precludes a civil action against a defendant based upon a conviction for murder or attempted murder if the defendant presented substantial evidence at trial that he or she was the victim of battered woman syndrome, or if the defendant’s parole was granted due to evidence of battered woman syndrome that was presented to the Board of Prison Terms.

This bill would change the reference from “battered womans syndrome” to “intimate partner battering.”

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4801 of the Penal Code is amended to
2 read:

3 4801. (a) The Board of Prison Terms may report to the
4 Governor, from time to time, the names of any and all persons
5 imprisoned in any state prison who, in its judgment, ought to
6 have a commutation of sentence or be pardoned and set at liberty
7 on account of good conduct, or unusual term of sentence, or any
8 other cause, including evidence of intimate partner battering and
9 its effects. For purposes of this section, “intimate partner
10 battering and its effects” may include evidence of the nature and
11 effects of physical, emotional, or mental abuse upon the beliefs,
12 perceptions, or behavior of victims of domestic violence where it
13 appears the criminal behavior was the result of that victimization.

14 (b) The Board of Prison Terms, in reviewing a prisoner’s
15 suitability for parole pursuant to Section 3041.5, shall consider
16 any information or evidence that, at the time of the commission
17 of the crime, the prisoner had experienced intimate partner
18 battering, but was convicted of the offense prior to the enactment
19 of Section 1107 of the Evidence Code by Chapter 812 of the
20 Statutes of 1991. The board shall state on the record the
21 information or evidence that it considered pursuant to this
22 subdivision, and the reasons for the parole decision. The board
23 shall annually report to the Legislature and the Governor on the

1 cases the board considered pursuant to this subdivision during the
2 previous year, including the board's decision and the findings of
3 its investigations of these cases.

4 SEC. 2. Section 5075.5 of the Penal Code is amended to read:

5 5075.5. All commissioners and deputy commissioners who
6 conduct hearings for the purpose of considering the parole
7 suitability of prisoners or the setting of a parole release date for
8 prisoners, shall receive initial training on domestic violence cases
9 and intimate partner battering and its effects.

10 SEC. 3. Section 13823.93 of the Penal Code is amended to
11 read:

12 13823.93. (a) For purposes of this section, the following
13 definitions apply:

14 (1) "Medical personnel" includes physicians, nurse
15 practitioners, physician assistants, nurses, and other health care
16 providers, as appropriate.

17 (2) To "perform a medical evidentiary examination" means to
18 evaluate, collect, preserve, and document evidence, interpret
19 findings, and document examination results.

20 (b) To ensure the delivery of standardized curriculum,
21 essential for consistent examination procedures throughout the
22 state, one hospital-based training center shall be established
23 through a competitive bidding process, to train medical personnel
24 on how to perform medical evidentiary examinations for victims
25 of child abuse or neglect, sexual assault, domestic violence, elder
26 abuse, and abuse or assault perpetrated against persons with
27 disabilities. The center also shall provide training for
28 investigative and court personnel involved in dependency and
29 criminal proceedings, on how to interpret the findings of medical
30 evidentiary examinations.

31 The training provided by the training center shall be made
32 available to medical personnel, law enforcement, and the courts
33 throughout the state.

34 (c) The training center shall meet all of the following criteria:

35 (1) Recognized expertise and experience in providing medical
36 evidentiary examinations for victims of child abuse or neglect,
37 sexual assault, domestic violence, elder abuse, and abuse or
38 assault perpetrated against persons with disabilities.

39 (2) Recognized expertise and experience implementing the
40 protocol established pursuant to Section 13823.5.

1 (3) History of providing training, including, but not limited to,
2 the clinical supervision of trainees and the evaluation of clinical
3 competency.

4 (4) Recognized expertise and experience in the use of
5 advanced medical technology and training in the evaluation of
6 victims of child abuse or neglect, sexual assault, domestic
7 violence, elder abuse, and abuse or assault perpetrated against
8 persons with disabilities.

9 (5) Significant history in working with professionals in the
10 field of criminalistics.

11 (6) Established relationships with local crime laboratories,
12 clinical laboratories, law enforcement agencies, district
13 attorneys' offices, child protective services, victim advocacy
14 programs, and federal investigative agencies.

15 (7) The capacity for developing a telecommunication network
16 between primary, secondary, and tertiary medical providers.

17 (8) History of leadership in working collaboratively with
18 medical forensic experts, criminal justice experts, investigative
19 social worker experts, state criminal justice, social services,
20 health and mental health agencies, and statewide professional
21 associations representing the various disciplines, especially those
22 specified in paragraph (6) of subdivision (d).

23 (9) History of leadership in working collaboratively with state
24 and local victim advocacy organizations, especially those
25 addressing sexual assault and domestic violence.

26 (10) History and experience in the development and delivery
27 of standardized curriculum for forensic medical experts, criminal
28 justice professionals, and investigative social workers.

29 (11) History of research, particularly involving databases, in
30 the area of child physical and sexual abuse, sexual assault, elder
31 abuse, or domestic violence.

32 (d) The training center shall do all of the following:

33 (1) Develop and implement a standardized training program
34 for medical personnel that has been reviewed and approved by a
35 multidisciplinary peer review committee.

36 (2) Develop a telecommunication system network between the
37 training center and other areas of the state, including rural and
38 mid-sized counties. This service shall provide case consultation
39 to medical personnel, law enforcement, and the courts and
40 provide continuing medical education.

1 (3) Provide ongoing basic, advanced, and specialized training
2 programs.

3 (4) Develop guidelines for the reporting and management of
4 child physical abuse and neglect, domestic violence, and elder
5 abuse.

6 (5) Develop guidelines for evaluating the results of training for
7 the medical personnel performing examinations.

8 (6) Provide standardized training for law enforcement officers,
9 district attorneys, public defenders, investigative social workers,
10 and judges on medical evidentiary examination procedures and
11 the interpretation of findings. This training shall be developed
12 and implemented in collaboration with the Peace Officer
13 Standards and Training Program, the California District
14 Attorney's Association, the California Peace Officers
15 Association, the California Police Chiefs Association, the
16 California State Sheriffs Association, the California Association
17 of Crime Laboratory Directors, the California Sexual Assault
18 Investigators Association, the California Alliance Against
19 Domestic Violence, the Statewide California Coalition for
20 Battered Women, the Family Violence Prevention Fund, child
21 victim advocacy organizations, the California Welfare Directors
22 Association, the California Coalition Against Sexual Assault, the
23 Department of Justice, the agency or agencies designated by the
24 Director of Finance pursuant to Section 13820, the Child Welfare
25 Training Program, and the University of California extension
26 programs.

27 (7) Promote an interdisciplinary approach in the assessment
28 and management of child abuse and neglect, sexual assault, elder
29 abuse, domestic violence, and abuse or assault against persons
30 with disabilities.

31 (8) Provide training in the dynamics of victimization,
32 including, but not limited to, rape trauma syndrome, intimate
33 partner battering and its effects, the effects of child abuse and
34 neglect, and the various aspects of elder abuse. This training shall
35 be provided by individuals who are recognized as experts within
36 their respective disciplines.

37 (e) Nothing in this section shall be construed to change the
38 scope of practice for any health care provider, as defined in other
39 provisions of law.

40 SEC. 4. Section 3030 of the Family Code is amended to read:

1 3030. (a) No person shall be granted physical or legal
2 custody of, or unsupervised visitation with, a child if the person
3 is required to be registered as a sex offender under Section 290 of
4 the Penal Code where the victim was a minor, or if the person
5 has been convicted under Section 273a, 273d, or 647.6 of the
6 Penal Code, unless the court finds that there is no significant risk
7 to the child and states its reasons in writing or on the record.

8 (b) No person shall be granted custody of, or visitation with, a
9 child if the person has been convicted under Section 261 of the
10 Penal Code and the child was conceived as a result of that
11 violation.

12 (c) No person shall be granted custody of, or unsupervised
13 visitation with, a child if the person has been convicted of murder
14 in the first degree, as defined in Section 189 of the Penal Code,
15 and the victim of the murder was the other parent of the child
16 who is the subject of the order, unless the court finds that there is
17 no risk to the child's health, safety, and welfare, and states the
18 reasons for its finding in writing or on the record. In making its
19 finding, the court may consider, among other things, the
20 following:

21 (1) The wishes of the child, if the child is of sufficient age and
22 capacity to reason so as to form an intelligent preference.

23 (2) Credible evidence that the convicted parent was a victim of
24 abuse, as defined in Section 6203, committed by the deceased
25 parent. That evidence may include, but is not limited to, written
26 reports by law enforcement agencies, child protective services or
27 other social welfare agencies, courts, medical facilities, or other
28 public agencies or private nonprofit organizations providing
29 services to victims of domestic abuse.

30 (3) Testimony of an expert witness, qualified under Section
31 1107 of the Evidence Code, that the convicted parent ~~suffers~~
32 ~~from the effects of~~ *experiences* intimate partner battering.

33 Unless and until a custody or visitation order is issued pursuant
34 to this subdivision, no person shall permit or cause the child to
35 visit or remain in the custody of the convicted parent without the
36 consent of the child's custodian or legal guardian.

37 (d) The court may order child support that is to be paid by a
38 person subject to subdivision (a), (b), or (c) to be paid through
39 the local child support agency, as authorized by Section 4573 of

1 the Family Code and Division 17 (commencing with Section
2 17000) of this code.

3 (e) The court shall not disclose, or cause to be disclosed, the
4 custodial parent's place of residence, place of employment, or the
5 child's school, unless the court finds that the disclosure would be
6 in the best interest of the child.

7 SEC. 5. Section 340.3 of the Code of Civil Procedure is
8 amended to read:

9 340.3. (a) Unless a longer period is prescribed for a specific
10 action, in any action for damages against a defendant based upon
11 the defendant's commission of a felony offense for which the
12 defendant has been convicted, the time for commencement of the
13 action shall be within one year after judgment is pronounced.

14 (b) (1) Notwithstanding subdivision (a), an action for
15 damages against a defendant based upon the defendant's
16 commission of a felony offense for which the defendant has been
17 convicted may be commenced within 10 years of the date on
18 which the defendant is discharged from parole if the conviction
19 was for any offense specified in paragraph (1), except voluntary
20 manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22),
21 (25), (34), or (35) of subdivision (c) of Section 1192.7 of the
22 Penal Code.

23 (2) No civil action may be commenced pursuant to paragraph
24 (1) if any of the following applies:

25 (A) The defendant has received either a certificate of
26 rehabilitation as provided in Chapter 3.5 (commencing with
27 Section 4852.01) of Title 6 of Part 3 of the Penal Code or a
28 pardon as provided in Chapter 1 (commencing with Section
29 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of
30 Part 3 of the Penal Code.

31 (B) Following a conviction for murder or attempted murder,
32 the defendant has been paroled based in whole or in part upon
33 evidence presented to the Board of Prison Terms that the
34 defendant committed the crime because he or she was the victim
35 of intimate partner battering.

36 (C) The defendant was convicted of murder or attempted
37 murder in the second degree in a trial at which substantial
38 evidence was presented that the person committed the crime
39 because he or she was a victim of intimate partner battering.

1 (c) If the sentence or judgment is stayed, the time for the
2 commencement of the action shall be tolled until the stay is
3 lifted. For purposes of this section, a judgment is not stayed if the
4 judgment is appealed or the defendant is placed on probation.

5 (d) (1) Subdivision (b) shall apply to any action commenced
6 before, on, or after the effective date of this section, including
7 any action otherwise barred by a limitation of time in effect prior
8 to the effective date of this section, thereby reviving those causes
9 of action that had lapsed or expired under the law in effect prior
10 to the effective date of this section.

11 (2) Paragraph (1) does not apply to either of the following:

12 (A) Any claim that has been litigated to finality on the merits
13 in any court of competent jurisdiction prior to January 1, 2003.
14 For purposes of this section, termination of a prior action on the
15 basis of the statute of limitations does not constitute a claim that
16 has been litigated to finality on the merits.

17 (B) Any written, compromised settlement agreement that has
18 been entered into between a plaintiff and a defendant if the
19 plaintiff was represented by an attorney who was admitted to
20 practice law in this state at the time of the settlement, and the
21 plaintiff signed the agreement.

22 (e) Any restitution paid by the defendant to the victim shall be
23 credited against any judgment, award, or settlement obtained
24 pursuant to this section. Any judgment, award, or settlement
25 obtained pursuant to an action under this section shall be subject
26 to the provisions of Section 13966.01 of the Government Code.